

511

1950.

File No. 3153/48

B CLASS

P.W.

DEPARTMENT

E BRANCH (11)

Subject:— Constitution of India
Scope and effect of a pardon
Granted by the president,
a Governor or Rajpramukh
Under the

(2)

B/K 1950



File No. 3153/48 Br. F (11)

Std. Sect. Slip. 24 A

G. R., G. D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET

Subject :—

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P. W. DEPT.

E BRANCH. (11)

References :—

Original file sent to Maharashtra

Date.	To whom sent.	Notes and instructions.

Copy of a letter from the Government of India, Ministry of Home Affairs, No. 40/20/50-Judicial, dated the 7th August 1950, regarding scope and effect of a pardon granted by the President, a Governor or a Rajpramukh under the Constitution.

I am directed to say that, on a question raised by one of the State Government, the Government of India have examined the scope and effect of a pardon granted by the President, the Governor of a Part A State, or the Rajpramukh of a Part 'B' State, in exercise of the powers conferred on them by the Constitution, Article 72 and article 161, read with article 238, of the Constitution define the powers of the President, the Governor and the Rajpramukh to grant pardons, reprieves, respites or remissions of punishments, and to suspend, remit or commute sentences. So far as Part 'A' State are concerned, sections 401 to § 402A of the Code of Criminal Procedure have been adapted accordingly under the Adaptation of Laws Order, 1950.

2. The Government of India are advised that the grant of a pardon by the President, the Governor or the Rajpramukh in pursuance of his powers under the Constitution, is distinguishable from the total remission of a sentence, inasmuch as the effect and consequences ensuing in each case are different. A pardon unconditionally granted and a conditional pardon if the condition has been fulfilled, have both the effect of wiping out the conviction and the penal consequences attached to it, thereby restoring to the person pardoned such of his civil rights as he possessed before his conviction, and lost as a result of the conviction; but a total remission results in annulling the sentence only and not the conviction attached to it.

3. As regards the scope of pardon, the Government of India consider that the powers of the President, the Governor and the Rajpramukh under the aforesaid provisions of the Constitution are very wide and that, as facts and circumstances are variable, each case would have to be considered on its merits. It is not possible, therefore, to lay down the precise circumstances or

types of cases in which this power may be exercised. At best, the Government of India would suggest that the power to grant pardon be exercised only in rare and exceptional cases, as for example where it is clear that there has been a definite failure of justice and that the offender has been convicted for an offence of which he is in fact innocent.

Secy.
Id/-

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No. 3993/6-C.
Home Department.
Bombay Castle, 26th August 1950.

Copies forwarded with compliments for information to :-

The Registrar, High Court, (Appellate Side), Bombay, (by letter),
The Prothonotary and Senior Master, High Court, (Original Side),
Bombay, (by letter),

All District Magistrates,
The Inspector General of Prisons, State of Bombay,
The Inspector General of Police, State of Bombay,
The Chief Inspector of Certified Institutions, State of Bombay,
All Departments of the Secretariat.

Sd/-

for Secretary to the Government of Bombay,
Home Department.

GP Tambakhe
25th July 1950